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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 EDUARDO CAMACHO,

10 Petitioner,

11 vs.

12 E.K. MCDANIEL, *et al.*,

13 Respondents.
14

Case No. 3:11-cv-00318-LRH-WGC

ORDER

15 This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, filed by
16 a Nevada state prisoner. Due to a typographical error in the court's previous scheduling order dated
17 March 12, 2015 (#37), the court now vacates that order and replaces it with the instant scheduling order.

18 On February 4, 2015, this court granted petitioner's motion for counsel and appointed the
19 Federal Public Defender to represent petitioner in this action (#34). On March 6, 2015, Thomas Lee
20 of the Federal Public Defender's Office appeared on behalf of petitioner (#36). The court now sets a
21 schedule for further proceedings in this action.

22 **IT IS THEREFORE ORDERED** that the court's scheduling order dated March 12, 2015 (#37)
23 is hereby **VACATED**.

24 **IT IS FURTHER ORDERED** that counsel for petitioner shall meet with petitioner as soon as
25 reasonably possible, if counsel has not already done so, to: (a) review the procedures applicable in cases
26 under 28 U.S.C. § 2254; (b) discuss and explore with petitioner, as fully as possible, the potential
27 grounds for habeas corpus relief in petitioner's case; and (c) advise petitioner that all possible grounds

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1 for habeas corpus relief must be raised at this time in this action and that the failure to do so will likely
2 result in any omitted grounds being barred from future review.

3 **IT IS FURTHER ORDERED** that petitioner shall have **ninety (90) days** from the date of entry
4 of this order, to **FILE AND SERVE** on respondents an amended petition for writ of habeas corpus,
5 which shall include all known grounds for relief (both exhausted and unexhausted).

6 **IT IS FURTHER ORDERED** that respondents shall file a response to the amended petition,
7 including potentially by motion to dismiss, within **ninety (90) days** of service of the amended petition,
8 with any requests for relief by petitioner by motion otherwise being subject to the normal briefing
9 schedule under the local rules. **Any response filed shall comply with the remaining provisions**
10 **below, which are entered pursuant to Habeas Rule 4.**

11 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents in this case
12 shall be raised together in a single consolidated motion to dismiss. In other words, the court does not
13 wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive
14 motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to
15 dismiss will be subject to potential waiver. Respondents shall not file a response to any amended
16 petition in this case that consolidates their procedural defenses, if any, with their response on the merits,
17 except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
18 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within
19 the single motion to dismiss **not** in the answer; and (b) they shall specifically direct their argument to
20 the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th
21 Cir. 2005). In short, no procedural defenses, including exhaustion, shall be included with the merits
22 in an answer. All procedural defenses, including exhaustion, instead must be raised by motion to
23 dismiss.

24 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents shall
25 specifically cite to and address the applicable state court written decision and state court record
26 materials, if any, regarding each claim within the response as to that claim.

27 **IT IS FURTHER ORDERED** that petitioner, through counsel, shall have **thirty (30) days**
28 from service of the answer, motion to dismiss, or other response to file a reply or opposition, with any

1 other requests for relief by respondents by motion otherwise being subject to the normal briefing
2 schedule under the local rules.

3 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed herein by
4 either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits
5 by number. The CM/ECF attachments that are filed further shall be identified by the number or
6 numbers of the exhibits in the attachment. The hard copy of any additional state court record exhibits
7 shall be forwarded – for this case – to the staff attorneys in **Reno**.

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9 DATED this 13th day of March, 2015.


10 LARRY P. HICKS
11 UNITED STATES DISTRICT JUDGE
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